



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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JAN 13 2012

Shellie Chard-McClary
Division Director
Water Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Dear Ms. Chard-McClary:

Thank you for your letter of December 15, 2011, regarding the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) under the Safe Drinking Water Act. Your letter questioned ODEQ's ability to continue implementing the Stage 1 DBPR rules once EPA begins full implementation of the Stage 2 DBPR requirements.

This letter provides EPA's analysis of ODEQ's legal authority to implement the Stage 1 DBPR requirements. Furthermore, this letter provides notification and clarification regarding the Stage 1 DBPR requirements, and advises ODEQ of its legal responsibilities for continued implementation of Stage 1 DBPR requirements. These Stage 1 DBPR requirements, which ODEQ is currently and legally responsible for implementing, include bromate monitoring, chlorite monitoring, disinfection byproducts (DBP) precursor removal, among other Stage 1 DBPR associated requirements listed in the National Primary Drinking Water Regulations 40 CFR Subpart G of 141.64-141.65, Subpart L 40 CFR 141.130-141.135, Subpart O 40 CFR 141.151-141.155, and Subpart Q 141.201 -141.211.

It is important to recognize that the Stage 2 DBPR builds upon and supplements the Stage 1 DBPR. The Stage 1 DBPR requirements are not converted to nor re-classified as Stage 2 DBPR requirements upon the start of Stage 2 DBPR compliance monitoring requirements. Unless a requirement has an expiration date under the Stage 1 DBPR, EPA is clarifying that all other Stage 1 DBPR requirements continue to remain effective under ODEQ primary enforcement authority (primacy), even when federal Stage 2 DBPR compliance monitoring requirements become effective. Furthermore, the ODEQ does not have authority to transfer responsibility of Stage 1 DBPR requirements for which it has already received primacy. And, because Oklahoma has not adopted the federal Stage 2 DBPR regulations as a part of Oklahoma state law, the state law does not contain any expiration date for the Stage 1 DBPR, even though the federal Stage 2 DBPR regulations do have an expiration date for some Stage 1 DBPR requirements. *See e.g.*, 40 C.F.R. section 141.64(b); *compare with* Okla. Admin. Code 252:631-1-3, OK ADC 252:631-1-3 (adoption of U.S. EPA regulations by reference, excepting, among other federal regulations, 40 C.F.R. sections 141.620-141.629 (Subpart V)).

ODEQ has received primary enforcement authority and has been implementing an approved Stage 1 DBPR, while EPA Region 6 has primary enforcement authority and has been implementing the Stage 2 DBPR on behalf of ODEQ. ODEQ has adopted and incorporated by reference the provisions of Parts 141, "National Primary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, 2010, and the requirements contained therein. ODEQ, therefore, is required to continue implementation of the Stage 1 DBPR requirements, such as, but not limited to DBP precursor removal, bromate monitoring, and chlorite monitoring requirements, which can be found in those parts of the Code of Federal Regulations that ODEQ has already adopted and incorporated by reference. Where EPA has determined that ODEQ has failed to appropriately conduct implementation of the Stage 1 DBPR requirements, EPA may take enforcement action through Administrative Orders of Compliance and Administrative Penalty Orders for public water systems with violations of the Stage 1 DBPR requirements.

The EPA Region 6 Drinking Water Section has been directed to and is committed to evaluating different options to address ODEQ's concern about the State's laboratory capacity shortfalls for calendar year 2013 for analyses of total trihalomethane (TTHM) and haloacetic acid (HAA5) in drinking water samples. We will be sending a separate letter to discuss in detail the laboratory capacity concerns for TTHM and HAA5 analyses.

In conclusion, EPA Region 6 advises ODEQ to continue its public health protection and legal responsibilities by implementing the Stage 1 DBPR and the other drinking water rules for which it has primary enforcement authority. We also encourage ODEQ to adopt and begin implementing the Stage 2 DBPR as soon as possible and thereby ensure that Oklahoma drinking water consumers receive drinking water that meets all requirements of federal law. If you have any questions, please do not hesitate to contact me at 214-665-3187.

Sincerely yours,

A handwritten signature in black ink, appearing to read "WK Honker", written in a cursive style.

William K. Honker, P.E.

Acting Director

Water Quality Protection Division

cc: Carl Parrott, ODEQ
Tim Ward, ODEQ
David Pruitt, ODEQ
Mista Burgess, ODEQ
Patrick Rosch, ODEQ
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Jay Wright, ODEQ